

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:	)	DOCKET NO. 98-SIT-6
	)	
Sempra Energy Resources and Occidental	)	COMMISSION DECISION
Energy Ventures Corp.	)	
(ELK HILLS POWER PROJECT)	)	
Petition for Jurisdictional Determination	)	
_____	)	

**COMMISSION DECISION**

**JANUARY 1999**

**CALIFORNIA  
ENERGY  
COMMISSION  
P800-99-001**

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

<b>In the Matter of:</b>	)	<b>Docket No. 98-SIT-6</b>
	)	
<b>Sempra Energy Resources and</b>	)	<b>COMMITTEE PROPOSED DECISION</b>
<b>Occidental Energy Ventures Corp.</b>	)	<b>RE: NOI EXEMPTION</b>
<b>(Elk Hills Power Project)</b>	)	
<b>Petition for Jurisdictional Determination</b>	)	
_____	)	

**I. THE PROJECT**

Sempra Energy Resources and Occidental Energy Ventures Corporation (Elk Hills Power Project or Petitioner) propose to construct and operate a 500 MW natural gas-fired combined cycle power plant that is a market-based response to the creation of the California Power Exchange (PX). The proposed project will be located in Kern County within the 74 square mile Elk Hills Petroleum Preserve, about 25 miles west of the city of Bakersfield. Petitioner will participate in the competitive electricity marketplace and expects to sell all or some of the project's electricity output through the PX and other power marketing outlets.

**II. PROCEDURAL HISTORY**

On October 14, 1998, Petitioner filed a "Petition for Jurisdictional Determination" requesting that the Commission find the Elk Hills Power Project eligible for an exemption from the Notice of Intention (NOI) requirements of Public Resources Code (PRC) section 25502. Petitioner asserts that its project conforms with the provisions of Public Resources Code (PRC) section 25540.6(a)(1) which exempts certain power plant projects from the NOI process.

On November 4, 1998, the Commission adopted certain findings in the *Blythe Energy* Decision as precedential for NOI exemption proceedings.<sup>1</sup> In that Decision, the Commission also indicated that Petitions for NOI exemptions may be reviewed on the basis of sworn testimony in lieu of evidentiary hearings.

By Notice dated November 12, 1998, the Energy Facility Siting Committee scheduled a hearing on the Petition before the full Commission at its December 16, 1998 Business Meeting. In accord with Commission regulations,<sup>2</sup> the Committee served the Notice and Petition upon the individuals, organizations, and businesses identified by Petitioner as "interested parties," as well as upon other persons and entities appearing on pertinent mailing lists. The Notice directed all entities wishing to participate in the proceeding to file written statements by November 25, 1998. The Notice also directed Petitioner to provide responses to several inquiries regarding its assertion that the proposed project qualifies for an NOI exemption. Petitioner timely filed its responses as sworn testimony. Commission Staff also filed a statement pursuant to the Notice. On December 1, 1998, due to administrative circumstances beyond the Committee's control, the Committee issued a Notice rescheduling the Commission hearing to January 6, 1999.

On December 14, 1998, the Committee issued this Proposed Decision which is based on the sworn testimony filed by Petitioner, as well as the statement submitted by Staff. The Proposed Decision was served on Petitioner and all interested parties for review and comment prior to the Commission's January 6<sup>th</sup> hearing on the matter.

### **III. APPLICABLE LAW**

#### **A. Statutory Requirements.**

Public Resources Code section 25502 provides in pertinent part that:

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<sup>1</sup> Docket No. 98-SIT-2; CEC Publication No. P800-98-004.

<sup>2</sup> Cal. Code of Regs., tit. 20, § 1232.

Each person proposing to construct a thermal power plant...shall submit to the commission a notice of intention [NOI] to file an application for the certification of the site and related facility or facilities.<sup>3</sup>

The purpose of the NOI is to provide an open planning process in which the project proponent, interested agencies, and members of the public have an opportunity to review the principal environmental, public health and safety, socioeconomic, and technological advantages and disadvantages of potential sites for a proposed project. (Cal. Code of Regs., tit. 20, § 1721). The NOI process also reviews whether a proposed project conforms with the Commission's assessment of electricity demand adopted pursuant to Section 25305 et seq. of the Public Resources Code. (PRC, § 25502).

Successful completion of the NOI process is a prerequisite to the second stage of power plant licensing, i.e., the Application for Certification (AFC). Public Resources Code section 25540.6, however, *exempts* certain projects from the NOI process and allows them to proceed directly to the AFC stage.<sup>4</sup> Projects eligible for this expedited licensing process include:

...a thermal power plant which is the result of a competitive solicitation or negotiation for new generation resources and will employ natural gas-fired technology... (PRC, § 25540.6(a)(1).)<sup>5</sup>

Petitioner contends its proposed project fits within this provision.

## **B. Policy Guidance.**

The Commission has authority to interpret pertinent statutory or regulatory provisions. Typically, such Commission policy is expressed in its biennial Electricity Report (*ER*), the most recently

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<sup>3</sup> The Commission generally has 12 months from the time an NOI filing is accepted in which to conduct this review. (PRC, § 25516.6(a).)

<sup>4</sup> The AFC process anticipates a *final* licensing decision within 12 months of filing an application. See, PRC, § 25540.6(a).

<sup>5</sup> PRC, § 25540.6 lists several specific NOI exemptions that include: cogeneration, solar, modification of a specific facility, site specific, less than 100 MW, and demonstration projects.

adopted of which is controlling for power plant proposals filed during an *ER*'s operative life. (PRC, §§ 25309 and 25523(f)). In the present instance, this guidance appears as part of the 1996 *ER* in which the Commission stated:

For gas-fired power plants which are the result of competitive solicitations or negotiations, we will continue our process [announced in the Addendum to *ER 94*] for granting exemptions from NOI requirements to such projects. (*ER 96*, p. 75, Endnote 1).

The policy expressed in *ER 94* and the Addendum to *ER 94* supported the development of a competitive market in the production and sales of electricity. The Addendum clarified Commission policy on legislation amending Section 25540.6 to allow NOI exemptions for natural gas-fired projects that are “the result of a competitive solicitation or negotiation.” (AB 1884; Statutes of 1993).<sup>6</sup> In the Addendum, the Commission expressed its preference for a “...broad construction of what it means to be 'the result of a competitive solicitation or negotiation'.”<sup>7</sup> In *ER 96*, the Commission expanded the views contained in *ER 94* and the *ER 94* Addendum to encourage the development of merchant power plants that participate in the newly emerging electricity marketplace without the benefit of ratepayer guarantees. (*ER 96* at pp. 71-72). Until the *Blythe Energy* Decision was issued, formal Commission policy on NOI exemptions was limited to these Electricity Reports.<sup>8</sup>

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<sup>6</sup> The Legislative Counsel's Digest for AB 1884 states that the amendments were intended to change the statute to conform to the present-day competitive marketplace of energy development. “[T]he siting provisions of the Act were written at a time when large baseload power plants were the types of plants being considered by the Commission and when competition between utilities and second party power producers was nonexistent.” (Leg. Counsel's Digest, Bill Analysis for AB 1884, Third Reading, April 12, 1993). At the time AB 1884 was adopted, the federal Public Utilities Regulatory Policy Act (PURPA) and other related state laws had established a process (Biennial Plan Report Update or BRPU) to allow regulated public utilities and independent power producers to compete in the marketplace through a competitive bid process in order to meet demand. (*Ibid.*; 8/27/93 Senate Analysis).

<sup>7</sup> *ER 94* Addendum, Revision 1, p. 2.

<sup>8</sup> See, *Blythe Energy*, pp. 3-6 for a more complete discussion of the NOI exemption policies contained in *ER 94* and *ER 96*.

### C. Precedential Decision

In *Blythe Energy*, the Commission further interpreted the scope of its policies pertaining to NOI exemptions, and determined that a natural gas-fired merchant project which proposes to sell its power in the competitive electricity market, and does not put ratepayers at risk, would generally be eligible for an NOI exemption. The Commission declared the following Findings as *Precedent*:<sup>9</sup>

- 1) The Commission adopted an “Addendum to the 1994 Electricity Report” on February 14, 1996.
- 2) This Addendum sets forth policies and procedures which apply to the interpretation of Public Resources Code (PRC) section 25540.6(a)(1) and are, on a case-by-case basis, specifically applicable to individual Petitions seeking an exemption from the Notice of Intention (NOI) provisions of PRC, § 25502.
- 3) The Commission adopted the 1996 Electricity Report (*ER*) which continued the policies set forth in *ER 94* and in the Addendum.
- 4) The California Power Exchange (PX) was created by AB 1890 to provide an efficient “competitive auction” open to all power producers, resulting in competitive market pricing at no risk to ratepayers. (Pub. Util. Code, § 355).
- 5) The creation of the PX, which promotes a competitive wholesale market, may be viewed as a continuing series of solicitations and negotiations, which are of the type reasonably envisioned by the policy expressed in the Addendum and PRC, § 25540.6(a)(1).
- 6) The PX market, which began the competitive auction on March 31 1998, replaced the solicitation process that existed under the Biennial Report Plan Update (BRPU).

In addition, the Commission found that power sales to the PX are the “result of a competitive solicitation or negotiation for new generation resources” within the meaning of PRC, § 25540.6(a)(1).<sup>10</sup> This finding includes natural gas-fired projects that sell power to other power

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<sup>9</sup> *Blythe Energy*, pp. 18-19.

<sup>10</sup> Commission Order adopting *Blythe Energy* (Order No. 98-1104-04); see also, *Blythe Energy*, pp. 17-18.

exchanges and/or wholesale, and/or retail marketers, and/or direct access power markets, and/or other power consumers.<sup>11</sup>

#### IV. EVIDENCE OF RECORD

The *Blythe Energy* Decision provides that a Petitioner may establish eligibility for an NOI exemption by filing sworn testimony in response to certain specific inquiries enumerated in that Decision.<sup>12</sup> In consideration of the issues raised in the instant Petition, the Committee directed Petitioner to respond to those inquiries as follows:<sup>13</sup>

1. Describe the specific nexus between the particular project proposed by Petitioner and the PX's solicitations for "day ahead" and "hourly bids". How is the proposed project anticipated to perform under both scenarios regarding its baseload and peaking capacities?
2. Is Petitioner negotiating with any other potential power purchasers or power exchanges?
3. What is Petitioner's registration status at the PX? If Petitioner has not begun the registration process, what are Petitioner's plans regarding registration and negotiation for a "PX Participation Agreement?"
4. Identify Petitioner's principal corporate owners and/or other entities or individuals who are legally and financially responsible for the development, construction, and operation of the proposed project.
5. Describe Petitioner's experience and assets with regard to power generation acquisition, and power plant development, ownership, and operation.
6. Describe the specific location where the project will be constructed, and describe Petitioner's site selection criteria that led to this particular site location.
7. Provide evidence describing the project components sufficiently to establish that the proposed facility is a natural gas-fired power plant.

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Id.*, fn. 27 at p. 18.

<sup>13</sup> See, November 12, 1998, Notice of Committee Hearing.

8. Provide evidence to establish that the proposed project can be developed and operated without the benefit of ratepayer support or guarantees.
9. Explain how Petitioner's negotiations may be affected by the Independent System Operator's "congestion" and "ancillary services" market activities.

Petitioner. Petitioner responded to the inquiries in its November 25, 1998, statement to the Committee. The responses were executed under penalty of perjury by Dwain M. Boettcher, Senior Vice President of Business Development for Sempra Energy Resources, and Jeffrey L. Hanig, Vice President and Director of Energy Services for Occidental Energy Ventures Corporation. Petitioner also submitted a letter from Sempra Energy Trading, the marketing affiliate of Sempra Energy Resources, stating that it is registered with the PX and available to sell power from the proposed project to the PX and other wholesale power markets. The Committee reviewed the sworn responses submitted by Petitioner and based its Findings and Conclusions upon that submittal, in lieu of an evidentiary hearing.

Staff. Staff agreed with Petitioner's assertions that the proposed merchant project is a natural gas-fired power plant that meets the statutory test for being the result of a competitive solicitation. (Staff Statement filed November 24, 1998). Staff expressed its belief that existing Commission policy and previous NOI exemption cases support such a conclusion.<sup>14</sup> (*Ibid.*)

There were no other comments or other evidence filed in this matter.

## **V. FINDINGS and CONCLUSIONS**

Based upon the precedent established in *Blythe Energy*, and in the absence of any contravening evidence, the Committee finds that Petitioner's proposed project is the "result of a competitive solicitation or negotiation" within the meaning of PRC, § 25540.6(a)(1).

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<sup>14</sup> Staff cites the Commission's Decisions in *Blythe Energy*, *supra*, and in *La Paloma* (98-SIT-1; CEC Publication No. P800-98-003) and cases cited therein.



Based on the totality of the record, we make the following findings and conclusions:

- 1) Sempra Energy Resources and Occidental Energy Ventures Corporation (Petitioner) filed a Petition seeking an exemption from the Notice of Intention (NOI) process in accord with the policy guidance set forth in the *ER 94 Addendum*, *ER 96*, and the *Blythe Energy Decision*, and in compliance with the requirements of Title 20, California Code of Regulations, sections 1230, et seq.
- 2) Petitioner proposes to construct a natural gas-fired combined cycle power plant, nominally rated at 500 MW (Elk Hills Power Project). Major equipment for the project is typical of natural gas-fired power plants, including two combustion turbine generators (CTGs) fueled with natural gas; a single steam turbine generator; two heat recovery steam generators (HRSGs); duct burners fueled with natural gas; and auxiliary equipment.
- 3) Sempra Energy Resources (SER) and Occidental Energy Ventures Corporation (OEVC) are engaged in a joint venture to develop, construct, and operate the Elk Hills Power Project. SER is a wholly owned subsidiary of Sempra Energy, a San Diego-based Fortune 500 energy-services holding company for Enova Corporation and Pacific Enterprises. SER is involved in the development of two 500 MW gas-fired projects and its management team has experience in siting power plants for San Diego Gas & Electric (SDG&E) and the Imperial Irrigation District. OEVC is an indirect, wholly-owned subsidiary of Occidental Petroleum Corporation, a Los Angeles-based Fortune 500 company. OEVC and/or Occidental own and operate power facilities throughout the United States with a total output of approximately 1500 MWs of electricity. Occidental also has an ownership interest in and operates a 44 MW cogeneration facility near the proposed project site through its subsidiary, Occidental of Elk Hills, Inc. (OEHI).
- 4) The Elk Hills Power Project will be located in Kern County, within the 74 square mile Elk Hills Petroleum Reserve, approximately 25 miles west of the city of Bakersfield. OEHI has an ownership interest in the Elk Hills Naval Petroleum Reserve No. 1. Natural gas produced from the Reserve is processed by OEHI and will be available to the proposed project.
- 5) Petitioner chose the site for the availability of processed natural gas produced at the Elk Hills Petroleum Reserve. In addition to fuel availability, the site selection factors included: proximity to the OEHI natural gas processing facilities, proximity to transmission corridors, compatibility with an existing industrial setting, distance of six miles from the nearest residence, and minimization of environmental impacts.
- 6) Petitioner will deliver power to the Midway substation, which is owned by Pacific Gas and Electric (PG&E), and is part of the transmission network controlled by the California Independent System Operator (ISO). Petitioner expects to provide ancillary services to the ISO including regulation; operating reserves when the project is not operating at full load; reactive power production; and possibly black start capability. Petitioner expects that transmission lines from the Midway substation to the ISO grid may be subject to congestion; however, the Elk Hills Power Project is less likely to be affected by

congestion than existing facilities with higher operating costs and less efficient emissions controls.

- 7) The Elk Hills Power Project is designed to provide operating flexibility in response to the PX's "day ahead" and "hour ahead" bidding processes. Petitioner expects the project will typically participate in the hourly market pricing posted by the PX.
- 8) The development of Petitioner's proposed power plant as a merchant project does not put ratepayers at risk. Although Sempra Energy owns regulated utilities in addition to its unregulated SER subsidiary, Petitioner is not eligible for utility ratepayer support mechanisms under affiliate rules administered by the California Public Utilities Commission (CPUC).
- 9) The proposed power plant project is a market-based response to the creation of the California Power Exchange (PX), and will be operated to sell some or all of its electricity output to the PX, and other power marketing outlets.
- 10) Petitioner has access to the PX market through Sempra Energy Trading, an affiliate of SER, which is registered with the PX; or, in the alternative, Petitioner will sell power through other power marketers or directly into the PX upon registration as a participant.

We conclude, therefore, that Petitioner's proposed natural gas-fired power plant project is the "result of competitive solicitation or negotiation" for the sale of its electric power. Under these circumstances, and in light of the factors mentioned above and discussed elsewhere in this Decision, and based on the precedent established in the *Blythe Energy* Decision, the Elk Hills Power Project qualifies for an exemption from the Notice of Intention as set forth in Public Resources Code section 25540.6(a)(1).

Dated: \_\_\_\_\_

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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ROBERT A. LAURIE  
Commissioner and Presiding Member  
Energy Facility Siting Committee

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DAVID A. ROHY, Ph.D.  
Vice Chair and Associate Member  
Energy Facility Siting Committee





## **APPENDIX A**

### **EVIDENCE OF RECORD**

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

<b>In the Matter of:</b>	)	<b>Docket No. 98-SIT-6</b>
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<b>Sempra Energy Resources and</b>	)	<b>COMMITTEE PROPOSED DECISION</b>
<b>Occidental Energy Ventures Corp.</b>	)	<b>RE: NOI EXEMPTION</b>
<b>(Elk Hills Power Project)</b>	)	
<b>Petition for Jurisdictional Determination</b>	)	
_____	)	

**EVIDENCE OF RECORD**

<u>Date</u>	<u>Document</u>
October 14, 1998	Petition for Jurisdictional Determination filed by Sempra Energy Resources and Occidental Energy Ventures Corporation (Elk Hills Power Project)
November 24, 1998	Energy Commission Staff Statement filed by Energy Commission Staff
November 25, 1998	Responses to Energy Facility Siting Committee's Inquiries 1 through 12, and attached Letter from Sempra Energy Trading, filed by Elk Hills Power Project

## **APPENDIX B**

### **PROOF OF SERVICE LIST**